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No. 478

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

BESS KAYE,

Appellant,

—v.—

SPENCE CHAPIN ADOPTION SERVICE,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF NEW YORK

PETITION FOR REHEARING

BESS KAYE
Petitioner, Pro Se
160 Weyman Ave.
New Rochelle, N. Y.

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Appellant,

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SPENCE CHAPIN ADOPTION SERVICE,

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ON APPEAL FROM THE COURT OF APPEALS OF NEW YORK.

PETITION FOR REHEARING

Petitioner prays that this Court grant rehearing of its order of December 9, 1963 dismissing her appeal, treating her Notice of Appeal as a petition for Writ of Certiorari, and denying Certiorari and that a writ of certiorari issue to review the judgment of the Court of Appeals of New York in the above-entitled case as prayed for in the Jurisdictional Statement filed September 18, 1963 herein.

Reasons for Granting Rehearing and Issuing the Writ

I. The order dismissing the appeal stated that this action was predicated on for "want of jurisdiction". Appellant, therefore, assumes that the appeal was dismissed because of insufficiently detailed specification of the raising of the Federal question. Appellant had no way of knowing that she would not receive due process in the Trial Court. Since her request for a ten day adjournment for her attorney to return was denied, as a layman she should not be penalized for not knowing how to couch her rights. She

did, however, say to the Trial Judge "Your Honor, I have a right to see the records I have subpoenaed" (R. 142). When her attorney entered the picture in the Appellate Division he promptly claimed that the unfair procedure was a denial of due process. Quoted in part from brief to Appellate Division from page 22, 2nd Paragraph "The violation of due process by not allowing a party to be represented by counsel is not cured by the trial court's suggestion that she may have counsel after the hearing is concluded (146)"; and in the Motion for Reargument in that Court he *specifically relied on the Federal due process clause.* The religious freedom question was likewise raised in brief, but it was only upon argument in Appellate Division did appellant definitely discover that child had been placed in wrong religion and when this information was discovered the Federal claims were made.

The following excerpts are in the affidavit that is part of the certified copy of Motion for Reargument made in Appellate Division and filed herewith Page 3, Points 8 and 9:

> "Was there a violation of *Section 1, Amendment 14 of the United States Constitution,* by the seizure of the child and placing her with strangers of a different religion?
>
> "Was the failure of the court to appoint a special guardian or guardian ad litem to represent the infant on the hearing, and the failure of the Court to protect the child by other means, and the failure and refusal of the court to require respondent to disclose the facts concerning the adoptive parents, a *violation of the same section of the Constitution which accords to the child the right of due process* and the equal protection of the laws of the State of New York?"

Page 8, Point 8 from certified copy of Motion of Reargument in Appellate Division filed herewith:

> "The three year old child here involved has been deprived of her liberty *without due process and has not been accorded the equal protection of the laws in violation of Section 1, Amendment 14, United States Constitution.*"

The Federal claims were preserved in the Court of Appeals (see certified questions in Notice of Appeal to Court of Appeals in Record on Appeal).

The following excerpts are from certified copy of brief to Court of Appeals filed herewith

Bottom page 22 and top page 23:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * * Amendment 1, United States Constitution."

The First Amendment is operative against New York and all other States by virtue of the Fourteenth Amendment, Section 1. The State of New York, by Article 1, Section 3, of its constitution, provides that

> "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind * * *"

Bottom page 24 and top of page 25 of certified brief to Court of Appeals filed herewith

> "The United States Constitution, Amendment XIV, Section 1, almost 100 years old, still guarantees that no state shall deprive any person of life, liberty or property without due process of law, and that no state shall deny to any person within its jurisdiction the equal protection of the laws."

Top Page 27 of certified brief to Court of Appeals filed herewith

> "The Fifth Amendment of the U. S. Constitution, which provides that no person shall be deprived of life, liberty, or property, without due process of law, and includes such protection to minors as well as adults, is the greatest protection to individual rights ever written."

II. In the State Appellate Courts appellant asked for a rehearing to afford her and child a full and fair hearing. The controlling issue, therefore, in the state courts was the due process clause and since the due process clause was raised as a federal violation of due process, the Federal question was necessary to a determination of the case. And since, besides the due process clause the religious freedom and child's liberty were also raised as Federal constitutional questions there was no adequate non-federal ground of decision and the non-federal question was not adequate to support the judgment of the Court of Appeals. Under these circumstances the refusal of the Court of Appeals to pass upon the federal question is just as reviewable as an express decision on the point.

CONCLUSION

Having shown the Court, that the Federal questions were timely raised, as applied to the facts of this case, and subsequently raised in the Court of Appeals and that the non-federal question was not adequate to support the decision of the Court of Appeals your appellant respectfully requests that a petition for rehearing be granted.

Bess Kaye
Petitioner *Pro Se*

Certificate of Petitioner *Pro Se*

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

BESS KAYE
Petitioner *Pro Se*